

Remarks

In response to the rejections under Section 112, claims 87, 100-103, and 105 are clarified.

With regard to several of the Section 103 rejections, “ON” is understood by the undersigned to be an abbreviation of “Official Notice”. The instances of reliance on “ON” Official Notice in rejecting the following claims are unnecessary, and are also challenged pursuant to MPEP § 2144.03: claims 88, 95-98, 102, 104, 106, 110. Official Notice is challenged in these instances because the facts asserted to be known are not capable of instant and unquestionable demonstration as being well-known. As a practical matter, these assertions of Official Notice are also unnecessary, because even assuming Wiser teaches the specific facts for which Official Notice is asserted in these instances, it does not provide such teachings with regard to peer nodes.

With regard to claim 86 and page 9 of the Office Action, Fabrizio fails to teach “disabling caching and other disk writes to prevent a copy of the critical portion of the content from being created on nonvolatile storage” as claimed. Fabrizio actually teaches *substituting* one caching mechanism for another caching mechanism: “The OSM cache engine is programmed to disable the traditional cache 206 *to prevent duplication* of the cache function.” Fabrizio, column 4 lines 63-65, emphasis added. Thus, Fabrizio fails to teach caching *to prevent copying* as claimed. In fact, Fabrizio teaches away from the claimed copy prevention by teaching continued caching by the OSM cache engine. Even if combined, the references fail to teach *disabling caching to prevent copying*, as is claimed. The combined references still create a cached copy.

Fabrizio also operates at a much lower level than Wiser, which further teaches away from combining the two references. Common programming practice discourages mixing in one level codes that generally operate at different levels, e.g., mixing high-level operations like Wiser’s user registration with low-level operations like Fabrizio’s cache modification. Hindsight application of the claims presented here would have been needed for one of skill in the art to not follow common programming practice by explicitly combining user registration with cache disablement in a single conceptual level. Fabrizio

and Wiser teach away from one another, and they would not have been combined. Claim 86 is patentable.

With regard to claim 87 and pages 3-4 of the Office Action, Shear and Wiser teach away from each other. Wiser's model is content distribution over a network but Shear's model is content distribution on DVDs. As a consequence, Wiser is concerned with registered users and passwords, whereas Shear does not even mention "password" or "registered user". In Wiser, rights are associated primarily with registered users, while in Shear rights are associated primarily with DVDs or devices such as DVD players. Hence, one of skill would not have been led to combine these disparate models without the guidance of the claims presented here.

With regard to claim 88 and page 4 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Wiser discusses musical recordings. Furthermore, claim 88 is patentable at least because its parent claim 87 is patentable.

With regard to claims 89 and 90, and pages 6-7 of the Office Action, ON Official Notice is challenged and is unnecessary. The reliance on Salesky is also unnecessary. Wiser teaches video content, e.g., in the first paragraph of the Background of the Invention section. Furthermore, claims 89 and 90 are each patentable at least because the parent claim 87 is patentable.

With regard to claims 91 and 92, and page 7 of the Office Action, ON Official Notice is challenged and is unnecessary. Furthermore, claims 91 and 92 are each patentable because the parent claim 87 is patentable. In addition, Salesky and Wiser teach away from each other. It is common knowledge that music downloads are performed by individuals, and that the act of listening to music is primarily a solitary experience. By contrast, video conferencing is inherently a group activity. One of skill would not have looked in Wiser, which is focused on individual and solitary experience, to find techniques for enhancing the group activity of video conferencing. The references teach away from each other, and hence would not have been combined.

With regard to claims 93 and 94, and page 7 of the Office Action, ON Official Notice is challenged and is unnecessary. Furthermore, claims 93 and 94 are each patentable because the parent claim 87 is patentable. Salesky and Wiser also teach away from each other as discussed above in connection with claims 91 and 92. In addition, it is common knowledge that music downloads are not interactive once the download starts, whereas video conferencing is inherently interactive. One of skill would not have looked in Wiser, which is focused on a batch activity, to find techniques for enhancing interactive (video) conferencing. Salesky discusses “interactive” and “interaction”; Wiser does not. The references teach away from each other, and hence would not have been combined.

With regard to claim 95 and page 4 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Wiser discusses encrypted audio. Furthermore, claim 95 is patentable at least because its parent claim 87 is patentable.

With regard to claims 96-98 and page 5 of the Office Action, ON Official Notice is similarly challenged and unnecessary, as discussed above. Furthermore, each of claims 96-98 is also patentable at least because its parent claim 87 is patentable.

With regard to claim 99 and page 5 of the Office Action, ON Official Notice is challenged. Furthermore, claim 99 is patentable at least because its parent claim 87 is patentable. In addition, claim 99 has been amended to clarify that the handshake is a *periodic* handshake for given content, as opposed to the initial unrepeated use of public-private keys in Wiser.

With regard to claim 100 and page 5 of the Office Action, claim 100 is patentable at least because its parent claim 87 is patentable. In addition, there is apparently some confusion in the Office Action about the steps involved in Metz versus the steps for the present invention. Operation consistent with the claimed invention includes, for example, a user *requesting* content, a node *receiving* the request, *downloading* non-critical content, *serving* critical content, and *presenting* the content to the user. The cited portion of Metz, by contrast, discusses *downloading* code, and *executing* code. At best, Metz teaches that it was known how to download a portion of code before executing the code. But code is not necessarily content as claimed, and executing code is not necessarily presenting content as

claimed. Moreover, the cited portion of Metz fails to distinguish between *critical* content and non-critical content, so the claimed distinction between downloading non-critical content and serving critical content is not taught. Metz also fails to teach the claimed requirement of downloading non-critical content *at least one hour* before serving critical content. Even if Metz and Wiser were combined, the combination fails to teach the present invention's concept of downloading *non-critical* content *at least one hour* before serving critical content.

With regard to claim 101 and page 8 of the Office Action, ON Official Notice is challenged and unnecessary. Furthermore, claim 101 is patentable at least because its parent claim 87 is patentable. In addition, the cited portion of Salesky fails to teach moving content between peer nodes "in response to anticipated requests from users" as claimed. Indeed, Salesky fails to even mention "anticipated requests".

With regard to claim 102 and page 5 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Furthermore, claim 102 is patentable at least because its parent claim 87 is patentable.

With regard to claim 103 and page 6 of the Office Action, ON Official Notice is challenged. Claim 103 is patentable at least because its parent claim 87 is patentable. Also, the Office Action fails to recognize that claim 103 as presented does not recite a client node but instead recites a *peer* node; the Office Action admits on page 4 that Wiser fails to teach peer nodes.

With regard to claim 104 and page 6 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Furthermore, claim 104 is patentable at least because its parent claim 87 is patentable.

With regard to claim 105 and page 6 of the Office Action, ON Official Notice is challenged and unnecessary. Claim 105 is patentable at least because its parent claim 87 is patentable. In addition, the cited portion of Wiser fails to teach a method that "tracks content location and determines whether content is already resident on the second peer node or near the second peer node" as claimed. Wiser's content manager 112 merely

confirms that the requested song exists, whereas the claimed invention is concerned with content location, not merely with whether content exists.

With regard to claim 106 and page 6 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Furthermore, claim 106 is patentable at least because its parent claim 87 is patentable.

With regard to claim 107 and page 10 of the Office Action, claim 107 is patentable at least because its parent claim 86 is patentable. In addition, the Wiser Figure 9AB reservation request is not user-specific, whereas claim 107 requires “reserving a particular piece of courseware content *for a particular registered user*” (emphasis added). Moreover, Hollingsworth’s lack of concern with security teaches away from Wiser and from the claimed invention. Hollingsworth does not even mention “encryption” or “password”. Security is a concern when reserving particular content for a particular registered user, so one of skill would not have looked to Hollingsworth to expand the functionality of Wiser.

With regard to claim 108 and page 10 of the Office Action, ON Official Notice is challenged. Furthermore, claim 108 is patentable at least because its parent claim 86 is patentable. In addition, claim 108 has been amended to clarify the nature of the monitoring required, and such monitoring is not taught by the cited language.

With regard to claim 109 and pages 10-11 of the Office Action, claim 109 is patentable at least because its parent claim 89 is patentable. In addition, the discussion of claim 100 above is relevant. In particular, the cited portion of Metz fails to distinguish between critical content and non-critical content, so the distinction between downloading non-critical content and serving critical content is not taught. Nor is the concept of downloading non-critical content at least two hours before serving critical content taught. Even if Metz, Wiser, and Shear were combined, the combination fails to teach the present invention’s concept of downloading *non-critical* content *at least two hours* before serving critical content.

With regard to claim 110 and page 11 of the Office Action, ON Official Notice is challenged and unnecessary, as discussed above. Furthermore, claim 110 is patentable at least because its parent claim 86 is patentable.

Conclusion

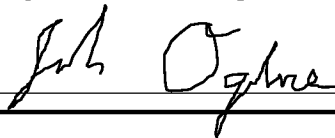
Applicants respectfully request allowance of the claims. Applicants' silence here as to any point does not signify agreement or acquiescence in the Office's assertions, and Applicants reserve all arguments. In the event of any questions, the undersigned invites a telephone call from the Office.

Dated April 10, 2009.

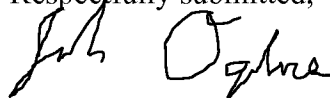
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CERTIFICATE OF TRANSMISSION

I hereby certify that this document is being submitted to the Commissioner for Patents through EFS-WEB, on April 10, 2009.



Respectfully submitted,



JOHN W. OGILVIE

Registration No. 37,987

Attorney for Applicants & Assignee

OGILVIE LAW FIRM

1320 East Laird Avenue

Salt Lake City, Utah 84105

801-706-2546 (voice)

801-583-0393 (fax)